Appendix A

Selective Service Regulations

"§1624.2 *Appearance before local board.*

(b) At any such appearance, the registrant may discuss his classification, may point out the class or classes in which he thinks he should have been placed, and may direct attention to any information in his file which he believes the local board has overlooked or to which he believes it has not given sufficient weight. *The registrant may present such further information as he believes will assist the local board in determining his proper classification. Such information shall be in writing, or, if oral, shall be summarized in writing and, in either event, shall be placed in the registrant's file.*" (Emphasis added.)

"1623.1 *Commencement of Classification.*

(b) The registrant's classification shall be determined solely on the basis of the official forms of the Selective Service System and such other written information as may be contained in his file; provided, that the local board shall proceed with the registrant's classification and classify him whenever (1) he fails to return his classification Questionnaire (SSS Form No. 100) within the time allowed by section 1621.10 of this chapter, or (2) he has been separated from the armed forces of the United States and the local board determines that he may be classified properly without requiring him to complete and return a Classification Questionnaire (SSS Form No. 100),

or (3) he fails to provide the local board with any other information concerning his status which he is requested or required to furnish. *Since it is imperative that appeal agencies have available to them all information on which the local board determined the registrant's classification, oral information shall not be considered unless it is summarized in writing and the summary placed in the registrant's file.* Under no circumstances shall the local board rely upon information received by a member personally unless such information is reduced to writing and placed in the registrant's file. None of the provisions of this section shall impair the power of the local board to take notice of the birthday of any registrant and of the fact that the Congress has made registrants of his age liable for induction for military service and in the absence of any other information, when the registrant has failed to furnish such information within the time prescribed, to classify the registrant as available for military service." (Emphasis added.)

Appendix B

Church Constitution, Article III

"* * * The Senior Elder shall be elected by the duly chosen representatives of the several student minister training projects of the Church, at a convention of such representatives called for that purpose."

Canon Law No. 15 (3)

"*Student Ministers*—those who are studying for the ministry of the Church, upon admission to such status by duly constituted authority of the Church, but not yet admitted to law/or ordained membership. This is a probationary status."

Canon Law No. 22

"A 'project manager' shall be any person having any classification of ecclesiastical membership who is duly authorized and empowered by the duly constituted ecclesiastical Church Government to assist those on the project in applying Christianity as taught, construed and defined by the duly constituted Church Government to everyday life. Such project manager is an ecclesiastical official of the Church Government, and shall be selected from among those designated by the Ecclesiastical Head of the Church Government to be entrusted with a position of trust and confidence.

"A 'project' is any group, undertaking or activity in which one or more persons under these canon laws undertakes to apply and illustrate

Christianity as taught, construed and defined by the duly constituted Church Government to every-day life. A project may or may not be owned in whole or in part by some temporal agency of the Church, or it may be owned by some individual and temporarily dedicated to such use without affecting, impairing or lessening the ownership of the individual therein. No property, other than money gifts and gifts of services shall be accepted by any temporal agency without the consent of the ecclesiastical church Government. Such assent may be conditional or absolute."

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In the Supreme Court of the United States

OCTOBER TERM, 1952

No. 536

ROBERT RUSSELL TYRRELL, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the Court of Appeals (C.R. 39-47 [1]) is reported at 200 F. 2d 8.

JURISDICTION

The judgment of the Court of Appeals was entered November 3, 1952 (C.R. 48). A petition for

[1] The clerk's record of proceedings in the Court of Appeals is herein designated "C.R.", and the reporter's transcript of the district court proceedings by the designation "R."

rehearing was denied December 10, 1952 (C.R. 49). The petition for a writ of certiorari was filed January 7, 1953. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1). See also Rules 37(b)(2) and 45(a), F. R. Crim. P.

QUESTIONS PRESENTED

1. Whether petitioner, claiming deferment from selective service as a full-time student for the ministry, was deprived of due process in the local selective service board's submission of his claim to the appeal board, in that the local board's summary of an oral hearing given petitioner did not state petitioner's argument that his manual ranch labor in a cooperative church project was considered a part of his instruction, where the file submitted to the appeal board included extensive church literature and statements of petitioner to substantially the same effect.

2. Whether the trial judge erred in instructing that there was a basis in fact for petitioner's I-A classification.

3. Whether, in light of the entire body of instructions to the jury, the trial judge erred in failing to give a special instruction to an inquiring juror with respect to the Selective Service System's list of recognized divinity schools and with respect to what would constitute a "recognized organization."

4. Whether a local board's determination that manual ranch work is not instruction for the ministry involves unconstitutional inference with religion.

STATUTE AND REGULATIONS INVOLVED

The pertinent portions of the Selective Service Act of 1948 and regulations issued thereunder are set forth in the Appendix, *infra,* pp. 21-27.

STATEMENT

The petition for a writ of certiorari seeks review of a judgment of the Court of Appeals for the Ninth Circuit (C.R. 48) unanimously affirming the judgment of the District Court for the Northern District of California imposing a sentence of three years' imprisonment on petitioner (C.R. 23-25), upon the verdict of the jury (C.R. 16), for violation of Sec. 12(a) of the Selective Service Act of 1948 by refusing, on March 9, 1951, to be inducted into the armed forces.

Petitioner, on June 12, 1950, filed his questionnaire with his local draft board (R. 46), including therein a request for classification in class IV-D as a student preparing for the ministry under the direction of an organization named Christ's Church of the Golden Rule; he stated that he was a "full-time student (minister)," and attending a training "project" of the organization at Lake Creek, Oregon, and that he had been six years in attendance at the church pursuing study as a student minister. He left blank the portions of the questionnaire in which compensation and agricultural occupations were to be described (Gov. Ex. 3 [Series VI, 3; VIII, 1(c), 6(c); IX; X, 3; and REGISTRANT'S STATEMENT REGARDING CLASSIFICATION]; R. 256).

On June 13, 1950, petitioner supplemented his questionnaire with a letter to the Selective Service System, dated June 7, bearing a letterhead, "Theological Seminary, Christ's Church of the Golden Rule" (R. 221; Def. Ex. B), and he also furnished, no later than August 28, a "miniature sermon" dated April 22, 1950 (R. 68; Def. Ex. A). The letter bore a San Francisco address and stated that petitioner was "registered and enrolled as a full-time student minister in the Theological Seminary" and that "[h]e is * * * pursuing his studies, sincerely endeavoring to become qualified to teach, preach and illustrate the precepts of the great wayshower * * *." The letter was signed by "(Rev.) Lewis B. Hart, D.D., Ph.D., M.A., Assistant Dean of the Faculty" (R. 181; Def. Ex. B). The sermon stated, *inter alia*, " * * * as a group we can show by our living example the practical import of Christ Jesus' teachings * * * " (Def. Ex. A).

On the back of the questionnaire appears an entry dated June 20, 1950, through which several lines have been stricken. The entry reads "classified 4-D. Form 110 mailed. MSB 3-0" (R. 48; Gov. Ex. 3). No testimony was adduced to indicate when or by whom the entry was stricken out, whether to indicate an error or otherwise (R. 48). The chairman of the draft board testified that the initials were those of a former clerk of the board who was without authority to make a classification, and that the 4-D classification, applicable to ministers or divinity students, was not made by

the board (R. 340-341).[2] The next entry, bearing the initials of the chairman of the draft board, is a classification of petitioner as I-A, dated August 28, 1950, by vote of three to nothing (R. 48; Gov. Ex. 3)[3] The entry indicates mailing of a notice of this classification to petitioner (R. 49), but petitioner testified he did not receive the notice (R. 170, 222, 224-225). On December 5, 1950, petitioner was sent a notice to appear for physical examination on December 18 (R. 49; Gov. Ex. 4). He appeared on that date, took the examination, and asked for a duplicate of the notice of classification as I-A (R. 50, 223-224; Gov. Ex. 5). Petitioner made no request for a board hearing at that time (R. 225), but after he was notified that he had passed the physical examination, he did ask for a board hearing (R. 225).[4] The hearing was allowed and took place on January 8 before the chairman and one other member of the board. The hearing was summarized from handwritten notes of the

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[2] Petitioner received the notice of classification as IV-D late in June or early in July (R. 221-222; Def. Ex. U) and the "classification book" also shows this entry (R. 90-92). Another board member had no recollection of the action (R. 353).

[3] The chairman of the board testified that in making this classification the entire file was considered, including petitioner's age, background, address in Oregon, the lack of listing of the purported divinity school in the Selective Service System lists, and the prospective result that, if there actually were other facts to warrant the deferment, the I-A classification would bring the registrant in to explain (R. 343-344).

[4] This statement of the order of events is petitioner's testimony. His letter requesting a hearing is dated December 22 (R. 225), while the formal notice that he had passed the examination was sent January 2 (R. 51).

chairman as follows (R. 54-55):

> January 8, 1951—interview with local board members.
>
> Employed—Paradise Meadow Ranch, P. O. Box 1152, Eagle Point, Oregon.
>
> Primary occupation: general ranch hand, utility worker, eight hours per day, forty-eight to fifty-six hours per week.
>
> Compensation alleged to be none, makes purchases for necessities of life from commissary upon requisition approved by manager.
>
> Attends morning devotional service from 7:00 a.m. to 7:15 a.m. everyday. Tuesday night weekly meeting consist of business meeting, ranch problems, and general discussion. Thursday night studies church literature from one hour to one and a half hours. Monday one hour per week attends sermon class. Maximum time given to church work and ranch work in ratio to ranch work one to eight.[5]

The board noted, at the hearing, that petitioner's seminary or project was not included in a list of divinity schools furnished to the local board by the Selective Service System (Def. Ex. X), but, as further testified by the chairman, "[t]he list of schools would not be binding on us at all if we felt that the young man, whoever he might be, was not actually * * * engaging in some phases of studies

[5] The chairman of the board testified: "We were seeking to determine whether or not the man was actually studying for the ministry or whether he was actually engaged in farm work, which perhaps did not have in our opinion a relation to the study of religion or preparing himself for the ministry" (R. 327).

which relate in our opinion to the study of the ministry or preparing himself for the study of the ministry" (R. 332). The chairman further testified that he did not tell petitioner that his church was not recognized, since "there was no occasion for that" (R. 328).[6]

The board chairman testified that he fully understood petitioner's contention that a godly act "was tantamount to the study of religion", but that while the board would not determine what should be the curriculum for divinity students, it would have to determine whether mere performance of manual labor for the church, accompanied by obtaining all the necessities of life thereby, was the subject of the deferment here in question (R. 334, 338-339).[7]

Petitioner's testimony concerning the hearing,

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[6] The chairman further stated (R. 328): "We were not in a position to determine whether the religion was recognized. The only point we had before us was whether or not the young man was attending a recognized divinity school." And see R. 348-349. The other member of the board testified that for the purpose of determining whether the school was or was not a divinity school, the list was used—"We follow the list on the recognized schools" (R. 357-358).

[7] Both members of the board specifically denied any cutting-off of conversation and asserted that there was, instead, an effort to adduce all the facts (R. 327, 350).

On cross-examination the Chairman testified (R. 333-334):

> Q. Did he explain this that you call work on the ranch was part of his religious training prescribed by the church?
>
> A. He didn't explain. He asserted. He stated that the performance of the work was the godly act, and that was tantamount to the study of religion. And I, of course, expatiated and said, "Well, if that be the case, then every young man who comes before this board could say, if he is driving an automobile as a chauffeur, mechanic, or

while conceding that there was a basically fair and friendly hearing (R. 295-297), adduced some matters denied by the board members. He stated that the board informed him that his organization was not listed as a church and could not be accepted as such (R. 227, 260, 263, 273, 292, 298, 308; Gov. Ex. 8), and that he was prevented by the flow of questioning from pointing out that his organization was in truth a church (R. 227-228, 309). He did not "remember" whether he initiated the discussion of his manual work on the ranch or whether this was elicited from him, for the first time, by the board's questions, stating, "I told them that when they asked me" (R. 261). He testified that the board's questioning prevented him from making adequate explanation of how cutting wood on the ranch, driving trucks, feeding cattle, or yard work were part of the "studies," in that they were practical application of the organization's teachings, the board apparently considering as studying only the time spent on meetings, "writing sermons and studying", and the board remarking that anyone could do the manual work (R. 228-231, 253-254, 260, 262-264, 294, 309; cf. testimony of the Board Chairman, *supra*).

Petitioner further testified that, in general, he considered it a denial of religious freedom if every member of draft age in his organization were not

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if he is engaged in any other occupation, that equally well he could say that he is studying for the ministry by performing his work for the love of God." I said, "Unfortunately we could not very well adopt that policy, otherwise we would not have any Army."

granted deferment as a minister (R. 286-287). He admitted that his questionnaire and its attached statement had presented his oral contention before the board, i.e. that the ranch work was part of the study as demonstrating the teachings of Christ "in every day affairs" (R. 294-295).

Having been advised by the board of his right to appeal and to submit additional information, petitioner duly filed his notice of appeal, dated January 14, 1951, and sent the board two items of literature concerning Christ's Church of the Golden Rule, and three additional miniature sermons by himself, dated October 28, November 11, and November 25, 1950, respectively (R. 55, 232-233, 235; Gov. Ex. 8; Def. Ex. C, D, E, J, K). One of the items of literature was entitled "Essence of the Teachings" of the organization (Def. Ex. J) and the other was a bulletin of a 1948 convention of the organization embodying its constitution and "Canon Laws" (Def. Ex. K). The "Essence of the Teachings" stated, at several points, that a major purpose of the organization was to provide a working model of the practicability of Christ's teachings; it referred to the whole project indiscriminately as a "ministry" without ascertainable differentiation of any smaller group as ministers (Def. Ex. J, pp. 3, 13, 19). The constitution and canon laws, while establishing various "ecclesiastical" and "temporal" bodies, and a "College of Pastors" and while empowering the ecclesiastical "organization" to provide for "ordination" (Def. Ex. K: Const. II, p. 5, V (2) p. 7, VII;

Canon Law #3, p. 13, #5), likewise referred to the entire organization as a ministry and established no definite separate group as ministers nor any curriculum for becoming a minister in the ordained sense.[8] Petitioner's three miniature sermons were brief, general statements of principle, exhibiting no biblical or scholastic citations or references to indicate training in such matters, and stressing that the organization's "Crusade" required the actual living of the principles, as in "[o]ur getting along with each other on our Church projects" (Def. Ex. C, D. E).

Petitioner's entire file, including the above items, was on January 23, 1951, sent to the appeal board which, on February 8, sustained the I-A classification by a vote of 4-0 (R. 59, 71-76, 98-99, 101-102, 110, 233, Gov. Ex. 9). On March 9, 1951, petitioner refused to be inducted, stating this to be "because of my religious training and belief", and that he "just could not take part in anything that had to do with war" (R. 119, 126, 133-134).

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[8] Lack of financial compensation for work was not here available to differentiate any separate group of ministers since all members shared such status (Def. Ex. K, Canon Laws, p. 17 par. (1)). The "student ministers" were defined as persons not yet admitted "to lay or ordained membership. This is a probationary status." [The petition, App. B, p. iii, contains a typographical error, terming it "law membership", rather than "lay membership."] Thus, a person could be a student minister and be attempting to attain lay membership, rather than ordained membership. Lay members were defined as those who wished to dedicate their lives "to the ministry of the Church" (Def. Ex. K, Canon Law # 15 (3), (5)). The definition of a "project" was not restricted to the ordinary concept of a seminary but merely an enterprise in which a group "undertakes to apply and illustrate Christianity" (Def. Ex. K, Canon Law # 22, p. 23).

At the trial, in addition to the evidence above summarized, three members of petitioner's organization—Lewis B. Hart, the Assistant Dean of the Faculty of the Seminary, who had signed the letter to the Selective Service Board, Mrs. Marion Huff, a member of the Elected Delegates Committee, and Harold V. Norris, the chairman of that committee—testified that the major portion of the "study" consisted "in obedience to instructions and the practical demonstration" (R. 187, 201, 213, 215, 312). The Assistant Dean testified that the organization was founded in 1944 (R. 193), that he did not know the names of others of the faculty, despite his being assistant dean (R. 193-194), that he had had no contact with petitioner since meeting him several years before (R. 196), that he had certified full-time student status as to petitioner upon the basis of reports of a committee or of a "class leader", neither of whom he could name (R. 197-198). Mrs. Huff admitted that she had spoken with petitioner only two or three times, and did not know what hours he devoted to studies (R. 218). She testified that there were no academic requirements for the ministry (R. 211), that there was no definite time for training (R. 212), and that no one had yet been ordained (R. 212). Norris testified that the course of instruction for the ministry in the church "is the regular curriculum that we are all taking, and how they perform it is judged by the examining board" (R. 313), that the examining board consisted of "affiliates" and not ministers (R. 316), that he be-

lieved that there were "a great number of teachers" at the seminary, that "[they] can be practically any of our people who qualify" (R. 316-317).

The judge, in charging the jury, read to it in full (R. 363-365) the part of the Selective Service Regulations which authorize a IV-D classification for "a student preparing for the ministry under the direction of a recognized church or religious organization and who is satisfactorily pursuing a full-time course of instruction in a recognized theological or divinity school" or "leading to entrance into" such a school.[9] He instructed, *inter alia,* that the decisions of local boards "shall be final except where an appeal is authorized" (R. 365) or unless "without basis in fact" (R. 368), that no classification is permanent and that a board would not be precluded from reopening a IV-D classification and reclassifying as I-A (R. 366), that the jurors were "not to decide what classification the defendant should have been given" (R. 366), that the question of whether there was any basis in fact was one of law (R. 368), and that there was here a basis in fact for the denial of IV-D classification by the local and appeal boards (R. 368-369).

He further charged the jury, however, that it must acquit if it found that the classification was "solely on the basis of prejudice and without any

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[9] The portions of Section 1622.19 of the regulations quoted by the judge, including the quotation of Section 16 of the Act, appear *infra,* Appendix, pp. 23-25.

evidence" (R. 369), or "because of [petitioner's] religious beliefs or affiliations" (R. 372), or that the board, at the oral hearing, prevented full statement or argument.

ARGUMENT

1. Petitioner's first contention rests upon a two-fold claim that "all information considered by the local board [must] be summarized in writing" (Pet. 19) and that the board chairman's notes of certain facts thus deprived petitioner of a fair hearing by failing to make a specific reference to petitioner's argument that his preponderantly manual labor on the ranch must be considered full-time instruction for the ministry (Pet. 18). The argument misconceives the regulation (Sec. 1624.2) requiring a summary of "further information," and it misconceives, as well, the full record that was actually sent to the appeal board.

The text of the regulation in question (Sec. 1624.2, *infra,* pp. 25-26) clearly shows that when a registrant appears before the local board his mere reiteration of what is already in writing in the file is not required to be set forth in writing again. The regulation first grants the registrant the right to "direct attention to any information in his file which he believes the local board has overlooked or to which he believes it has not given sufficient weight." There is no requirement that such argument be re-written and placed in the file. It is only with respect to the next sentence, granting the right to present "further information", that a

provision follows that "such information", if oral, is to be summarized in writing.[10]

When petitioner appeared before the board, his file already contained the clear, written contention that he was a "full-time student (minister)" of a San Francisco seminary, attending a purported training "project" in Oregon (*supra,* p. 3). The file also contained, in petitioner's supplemental statement and in his sermon and in the letter from the seminary (*supra,* p. 4), emphatic statement of the organization's basic concepts that its precepts must be lived in practice, the concepts being stated in these items in substantially as clear a form as they were ever to be explained—nebulously and guardedly—at the hearing or, indeed, at the trial itself. Moreover, petitioner himself conceded that the written material already in the file embodied what he wanted to say "but I did not know that they [the board] had seen it" (R.

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[10] As stated in *Niznik* v. *United States,* 173 F. 2d 328, 333 (C.A. 6), certiorari denied, 337 U.S. 925: "The oral information given by registrants which was required to be summarized in writing by the board, therefore, was 'further' information—information presented orally in addition to the written information or evidence already in the registrant's file. If the oral evidence introduced by a registrant on his personal appearance before the board is the same as the written evidence contained in his file, it is difficult to see how it could be said that the record on appeal, which consists of written evidence and which is composed of the registrant's complete file, does not contain the evidence presented before the local board, and how a registrant could, in such a case, be deprived of a fair hearing on his appeal through failure of the local board to summarize the same information that already appears in written form in his file." And see *United States* v. *Mansavage,* 178 F. 2d 812, 815-817 (C.A. 7), certiorari denied, 339 U.S. 931.

294-295; *supra*, p. 9). It was no "further information", nor even further *argument*, that petitioner contended that his work was full-time instruction for the ministry. The only "further information" was the detail of what he actually, physically did, and what he thus considered to be study, and this further information was set down in writing for the file. That was all that was required to be added to the file.[11]

It may be noted, further, that even if there had been a duty to reduce petitioner's argument and interpretations to writing, it is inconceivable that he was injured under the present circumstances, for no summary of his contentions could have supplied anything that was not more fully and, it is submitted, more persuasively set forth in the extensive literature of his church that was added to the file after the hearing and was sent to the appeals board, together with three additional miniature sermons by petitioner. As stated by the Court of Appeals below (C. R. 42-43):

> [T]he registrant's file that was sent to the Appeal Board by the local board included the Constitution and Canon Laws of Christ's Church of the Golden Rule which contain the tenets and doctrine that the work of an "ecclesiastical" member of the church such as Tyrrell on a "project" of the church is part

[11] The reference to summarizing of oral information, in Section 1623.1 of the regulations (*infra*, p. 25), is likewise to the summarizing of "information" and is not to be extended to cover unlimited argument and reiteration of what is already in the file.

> of its divinity studies and religious training. Thus the Appeal Board had before it the relationship between the church's creed and Tyrrell's daily labors on the Oregon ranch. Such information amounted to the substantial equivalent of the matter that was missing from the summary and, moreover, having been submitted and included in his file by Tyrrell himself, this evidential material was intended to show to the Appeal Board that the sole motive of his ranch work was the fulfillment of the precepts of Christ's Church of the Golden Rule. It will be presumed that the Appeal Board gave consideration to this situation as well as to the entire file before it in evaluating the registrant's status and classifying him as I-A.

The appeal board's failure to find petitioner to be a full-time student for the ministry is not to be ascribed to any unawareness of the contention of both the petitioner and his organization that ordinary manual work for church projects was preparation for the ministry. The board performed its function of differentiating between a "ministry" of an entire organization to the world and the ministry contemplated under the Selective Service enactments, in which only certain members of an organization are to be regarded as the spiritual leaders and in which the study was at least something more than the ordinary activity engaged in by the entire lay membership.

2. The facts set forth in the Statement herein which show that petitioner spent most of his time working on a ranch were a sufficient basis for the

trial court's instruction that as a matter of law petitioner was not "pursuing full-time courses of instruction in recognized theological or divinity schools," as the statute (50 U.S.C. App. 456(g), *infra*, p. 21) requires for exemption as a student of the ministry. Cf. *Cox* v. *United States*, 332 U.S. 442; *Estep* v. *United States*, 327 U.S. 114, 122-3.

There is no substance to petitioner's argument that, since he was originally classified IV-D on June 20, 1950, the change of classification by the Local Board to I-A on August 28, without receiving new information, shows that the latter classification must have been based on matters not in the record. In the first place, there was strong testimony that the June 20 entry of a IV-D classification was at the least an error and, more probably, an unauthorized entry (*supra*, pp. 4-5). Moreover, a board's classification can be changed if, as stated in Section 1625.2 (2) of the regulations (*infra*, p. 26), the action is based upon facts "not considered" when the registrant was classified. Any one of a number of facts [12] could have been overlooked in the June 20, 1950 evaluation of the file and been considered for the first time in a closer scrutiny in August induced, as suggested by the Court of Appeals (C.R. 44), by the intervening outbreak of armed hostilities in Korea.

3. After deliberating for some time, the jury returned for further instructions, and the judge substantially repeated the instructions, *inter alia*,

[12] *E.g.*, the discrepancy between the address of the seminary in San Francisco and petitioner's address in Oregon, or the nature of petitioner's miniature sermon and classification statement.

that there must be acquittal in the event the board's classification was solely on the basis of prejudice and without evidence, or due to religious prejudice, or in the event of inadequate opportunity for petitioner to make his statement or argument before the local board (R. 405-407). Upon a later calling in of the jury to check on the progress of their deliberations, one juror asked, "The list of schools—what is the instructions on that?" (R. 408); the judge re-read to the jury (R. 409-411) the definition of IV-D registrants (see Appendix, *infra,* pp. 23-25). A juror asked, "What would constitute a recognized organization? * * * That was the main issue". The judge replied, "You are to act upon the evidence and the instructions as a whole, as the Court has given them to you" (R. 411).

Petitioner's argument that the failure of the judge to give special instructions as to the list of schools constituted prejudicial error, misconceives the function of the jury in this case. The judge, in accordance with the decisions of this court in the *Cox* and *Estep* cases, *supra,* p. 17, had instructed the jury that, as a matter of law, there was basis in fact for the I-A classification. To have given the jury instructions on the list of schools would have encouraged them to consider the validity of the draft board's action, a matter which was not within their province. The judge properly referred the juror to his entire instructions which correctly set forth the only issues before the jury for determination.

The holding of the court that the I-A classifica-

tion had basis in fact was in effect a holding that no improper consideration had been given to the list. The file supports this conclusion. The file shows that petitioner was not devoting full time to a course of instruction. He was therefore not entitled to classification as a student for the ministry, irrespective of whether the organization itself was or was not a recognized school. See 50 U.S.C. App. 456(g), *infra*, p. 21). The board's conclusion that full time was not being devoted to instruction was amply supported in the fact that the great preponderance of the work was ordinary ranch work in a sort of cooperative enterprise from which petitioner in return derived all his living needs.

4. Petitioner contends that it is an unconstitutional interference with religion for a Selective Service board to determine whether a claimed preparation for the ministry is such or not.

But there is no constitutional right of a minister or student of the ministry to be exempted from the necessities of war (*Falbo* v. *United States*, 320 U.S. 549, 553-554; *United States* v. *Hearn*, 153 F. 2d 186, 187 (C.A. 5), certiorari dismissed, 329 U.S. 667). The Congress, as a matter of grace, has permitted an exemption in the case of a full-time course of instruction for the ministry. But there is no constitutional requirement that it must allow any religious group unreviewable freedom to call any activity it wants a course of instruction for the ministry for purposes of exemption. Cf. *Cox* v. *United States, supra*, p. 17. A Selective Service board of the registrant's neighbors is required by Congress to determine a registrant's classification,

and no enactment has restricted or is required to restrict that authority solely to rubber-stamping the claim of any organization, responsible or irresponsible, that certain physical acts constitute instruction, especially since the word "instruction" is fairly well established in common parlance.

The contention is the more astounding where, as here, the record shows a mere cooperative group in which, after eight years, no one has yet been ordained (*supra,* p. 11) and in which petitioner's activity apparently was preponderantly manual labor and, like that of the great body of the membership, far removed from any progression toward leadership in either spiritual or even ceremonial matters. By the testimony of the leaders of petitioner's sect, every member was a student for the ministry. That is obviously not the concept of study which Congress had in mind when it granted an exemption to full-time students of the ministry.

CONCLUSION

The case was decided on settled legal principles and no conflict of decisions or constitutional question is involved. It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

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APPENDIX

Statutes and Regulations Involved

Selective Service Act of 1948, 62 Stat. 604, 611, Section 6(g) (50 U.S.C. App. 456(g)):

> Regular or duly ordained ministers of religion, as defined in this title and students preparing for the ministry under the direction of recognized churches or religious organizations, who are satisfactorily pursuing full-time courses of instruction in recognized theological or divinity schools, or who are satisfactorily pursuing full-time courses of instruction leading to their entrance into recognized theological or divinity schools in which they have been preenrolled, shall be exempt from training and service (but not from registration) under this title.

Selective Service Act of 1948, 62 Stat. 604, 624, Section 16(g) (50 U.S.C. App. 466(g)):

> (1) The term "duly ordained minister of religion" means a person who has been ordained, in accordance with the ceremonial, ritual, or discipline of a church, religious sect, or organization established on the basis of a community of faith and belief, doctrines and practices of a religious character, to preach and to teach the doctrines of such church, sect, or organization and to administer the rites and ceremonies thereof in public worship, and who as his regular and customary vocation preaches and teaches the principles of religion and adminis-

ters the ordinances of public worship as embodied in the creed or principles of such church, sect, or organization.

(2) The term "regular minister of religion" means one who as his customary vocation preaches and teaches the principles of religion of a church, a religious sect, or organization of which he is a member, without having been formally ordained as a minister of religion, and who is recognized by such church, sect, or organization as a regular minister.

(3) The term "regular or duly ordained minister of religion" does not include a person who irregularly or incidentally preaches and teaches the principles of religion of a church, religious sect, or organization and does not include any person who may have been duly ordained a minister in accordance with the ceremonial, rite, or discipline of a church, religious sect or organization, but who does not regularly, as a vocation, teach and preach the principles of religion and administer the ordinances of public worship as embodied in the creed or principles of his church, sect, or organization.

Selective Service Act of 1948, Section 12(a), 62 Stat. 604, 622 (50 U.S.C. App. 462(a)):

Any * * * person * * * who in any manner shall knowingly fail or neglect or refuse to perform any duty required of him under or in the execution of this title, or rules, regulations, or directions made pursuant to this title * * * shall, upon conviction in any district court of

the United States of competent jurisdiction, be punished by imprisonment for not more than five years or a fine of not more than $10,000, or by both such fine and imprisonment * * *.

Regulations, Title 32, C.F.R. (1949 Ed.):

Section 1622.19:

CLASS IV-D: MINISTER OF RELIGION OR DIVINITY STUDENT.—(a) In Class IV-D shall be placed any registrant:

(1) Who is a regular minister of religion;

(2) Who is a duly ordained minister of religion;

(3) Who is a student preparing for the ministry under the direction of a recognized church or religious organization and who is satisfactorily pursuing a full-time course of instruction in a recognized theological or divinity school; or

(4) Who is a student preparing for the ministry under the direction of a recognized church or religious organization and who is satisfactorily pursuing a full-time course of instruction leading to entrance into a recognized theological or divinity school in which he has been pre-enrolled.

(b) Section 16 of title I of the Selective Service Act of 1948 contains in part the following provisions:

"SEC. 16. When used in this title—* * *

"(g) (1) the term 'duly ordained minister of religion' means a person who has been or-

dained, in accordance with the ceremonial, ritual, or discipline of a church, religious sect, or organization established on the basis of a community of faith and belief, doctrines and practices of a religious character, to preach and to teach the doctrines of such church, sect, or organization and to administer the rites and ceremonies thereof in public worship, and who as his regular and customary vocation preaches and teaches the principles of religion and administers the ordinances of public worship as embodied in the creed or principles of such church, sect, or organization.

"(2) The term 'regular minister of religion' means one who as his customary vocation preaches and teaches the principles of religion of a church, a religious sect, or organization of which he is a member, without having been formally ordained as a minister of religion, and who is recognized by such church, sect, or organization as a regular minister.

"(3) The term 'regular or duly ordained minister of religion' does not include a person who irregularly or incidentally preaches and teaches the principles of religion of a church, religious sect, or organization and does not include any person who may have been duly ordained a minister in accordance with the ceremonial, rite, or discipline of a church, religious sect or organization, but who does not regularly, as a vocation, teach and preach the principles of religion and administer the ordinances of public worship as embodied in the

creed or principles of his church, sect, or organization."

Section 1623.1:

* * * * *

(b) The registrant's classification shall be determined solely on the basis of the official forms of the Selective Service System and such other written information as may be contained in his file; * * * Since it is imperative that appeal agencies have available to them all information on which the local board determined the registrant's classification, oral information shall not be considered unless it is summarized in writing and the summary placed in the registrant's file. Under no circumstances shall the local board rely upon information received by a member personally unless such information is reduced to writing and placed in the registrant's file. None of the provisions of this section shall impair the power of the local board to take notice of the birthday of any registrant and of the fact that the Congress has made registrants of his age liable for induction for military service and in the absence of any other information, when the registrant has failed to furnish such information within the time prescribed, to classify the registrant as available for military service.

Section 1624.2:

* * * * *

(b) At any such appearance, the registrant may discuss his classification, may point out the class or classes in which he thinks he should

have been placed, and may direct attention to any information in his file which he believes the local board has overlooked or to which he believes it has not given sufficient weight. The registrant may present such further information as he believes will assist the local board in determining his proper classification. Such information shall be in writing, or, if oral, shall be summarized in writing and, in either event, shall be placed in the registrant's file. * * *

* * * * *

Section 1625.1:

(a) No classification is permanent.

(b) Each classified registrant and each person who has filed a request for the registrant's deferment shall, within 10 days after it occurs, report to the local board in writing any fact that might result in the registrant being placed in a different classification such as, but not limited to, any change in his occupational, marital, or dependency status, or in his physical condition. Any other person should, within 10 days after knowledge thereof, report to the local board in writing any such fact.

* * * * *

Section 1625.2:

The local board may reopen and reconsider anew the classification of a registrant * * * (2) upon its own motion if such action is based upon facts not considered when the registrant was classified which, if true, would justify a change in the registrant's classification * * *.

Section 1626.13:

(a) Immediately upon an appeal being taken to the appeal board by a person entitled to appeal, the local board shall prepare the Individual Appeal Record (SSS Form No. 120) in duplicate, attaching the original to the inside of the registrant's Cover Sheet (SSS Form No. 101) and placing the duplicate copy in the local board files. The local board shall carefully check the registrant's file to make certain that all steps required by the regulations have been taken and that the record is complete. If any facts considered by the local board do not appear in the written information in the file, the local board shall prepare and place in the file a written summary of such facts.

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